words "Though a man marries never so often, he can have but one lawful wife living. So long as she is living, and the marriage bond remains in full force, all his subsequent marriages whether meretricious or founded in mistake and at the time supposed to be lawful are utterly null and void." Some states which have statutes similar to those of New York have held marriages of this nature void. See *Glass* v. *Glass,* 114 Mass. 563; *Pain* v. *Pain,* 37 Mo. App. 110; *Webster* v. *Webster,* 58 N. H. 3; *Thomas* v. *Thomas,* 124 Pa. St. 646, 23 Wkly. Notes Cas. 410, 17 Atl. 182; *In re Clark's Estate,* 173 Pa. St. 451, 34 Atl. 68. The cases of *Webster* v. *Webster* and *Thomas* v. *Thomas,* supra, hold that although the marriage is void, the person marrying is exempt from criminal liability.

MUNICIPAL CORPORATIONS—LIABILITY IN TORT FOR THE NEGLIGENCE OF EMPLOYEES.—The plaintiff, while employed in repairing the roof of a police station, the property of the defendant city, was injured by falling into the elevator well. The negligence of a city employee was the cause of the accident. *Held,* that the city was exercising a governmental function in maintaining a police station, and was not liable. HAIGHT, J., dissenting. *Wilcox* v. *City of Rochester* (1907), — N. Y. —, 82 N. E. Rep. 1119.

The liability of the municipal corporation for tort depends upon the nature of the power or duty being exercised. If the function be governmental, the municipality is not liable, if quasi private or corporate, the liability attaches. The distinction is made between the political, administrative, governmental activities, and those powers granted for private corporate gain and advantage. *Maximillian* v. *The Mayor,* 62 N. Y. 160; *Lefrois* v. *County of Munroe,* 162 N. Y. 563; *Robinson* v. *Evansville,* 87 Ind. 334; *Ogg* v. *Lansing,* 35 Ia. 496; *Bryant* v. *St. Paul,* 33 Minn. 289; *Hill* v. *Boston,* 122 Mass. 344; *Murtaugh* v. *St. Louis,* 44 Mo. 479; *Eastman* v. *Meredith,* 36 N. H. 284. The courts differ, however, as to what functions are public or private. But it may safely be said that the establishment and operation of a jail is governmental. *Gray* v. *Griffin,* 111 Ga. 361; *Blake* v. *Pontiac,* 49 Ill. App. 543; *City of New Kiowa* v. *Craven,* 46 Kan. 114; *Gullickson* v. *McDonald,* 62 Minn. 278; *Carty* v. *Winooski,* 78 Vt. 104; *Brown's Adm'r.* v *Guyandotte,* 34 W. Va. 299. The same has been held as to police stations, *Kelly* v. *Cook,* 21 R. I. 29, and the city is not liable for the assaults or the negligence of its police officers. *McElroy* v. *Albany,* 65 Ga. 387; *Moffitt* v. *Asheville,* 103 N. C. 237. The dissenting opinion of HAIGHT, J., rests upon the view that the character of the service in which the servant is engaged controls and that in this case the employee was not performing a governmental function. The general rule is that the corporation is liable for the wrongful act, not ultra vires, done by its officer under direct authority, or subsequently ratified. It is liable for any act done by its officer, agent, servant, or employee in the execution of purely corporate powers or in the performance of ministerial corporate duties. *Orlando* v. *Pragg,* 31 Fla. 111; *Wright* v. *Augusta,* 78 Ga. 241; *Baltimore* v. *Eschbach,* 18 Md. 276; *Barree* v *Cape Girardeau,* 197 Mo. 382; *Missano* v. *New York,* 160 N. Y. 123; *Love* v. *Raleigh,* 116 N. C. 296; *Fischer* v. *New Bern,* 140 N. C. 506; *Hollman* v. *Platteville,* 101 Wis. 94. But it is not liable

for the acts of officers or servants discharging governmental powers or for their acts wholly without the scope of its powers. *Haley* v. *Boston,* 191 Mass. 291; *Wheeler* v. *Gilsum,* 73 N. H. 429; *Caspary* v. *Portland,* 190 Ore. 496; *Bartlett* v. *Clarksburg,* 45 W. Va. 393. In *Snider* v. *St. Paul,* 51 Minn. 466, it was held that the city was not liable for the negligence of its employee in running the elevator of a public building. The decision would seem to imply that operating an elevator in such a building is the performance of a governmental function. See 5 MICH. LAW REV. 136.

PAYMENT—MISTAKE—RECOVERY BACK.—Plaintiff's parents executed a contract for the sale of their lands to defendants which, though not void, was unenforceable. Her parents desiring not to perform the contract, plaintiff, believing that the same was enforceable, paid the vendees $800 to relieve her parents from the supposed liability. Defendants had possession of the contract, but no fraud on their part was proved; nor does it appear that plaintiff attempted to find out the precise contents of the contract. Later she learned that is was unenforceable. *Held,* that plaintiff was entitled to recover the money received by the vendees from her, even though her parents were under a moral obligation to perform the contract. *Tucker* v. *Denton et al.* (1907), — Ct. App. Ky. —, 106 S. W. Rep. 280.

The court bases its decision on the ground that plaintiff paid under a mistake of fact, viz: the non-existence of an enforceable contract. It is true that relief will be granted in case of a mistake as to the existence of a contract. *McDonald* v. *Lynch et al.,* 59 Mo. 350. But in the principal case it would seem that the only mistake was in believing the contract, which was known to exist, to be enforceable. Therefore plaintiff's claim appears to be founded only on a mistake of law. Parties will generally be granted no relief from such mistakes. *Rector* v. *Collins et al.,* 46 Ark. 167, 55 Am. Rep. 571; *Harrelson* v. *Barrett et al.,* 99 Cal. 607, 34 Pac. 342; *Bond* v. *Coats,* 16 Ind. 202; *Erkens* v. *Nicolin,* 39 Minn. 461, 40 N. W. 567. But in a few jurisdictions money paid under a mistake of law may be recovered if there is no legal or moral obligation to pay and the recipient has no right in good conscience to retain it. *Northrup* v. *Graves,* 19 Conn. 548; *Culbreath* v. *Culbreath,* 7 Ga. 64, 50 Am. Dec. 375. This appears to have been the earlier rule in Kentucky. *City of Covington* v. *Powell,* 2 Met. (59 Ky.) 226. But a later decision laid down the broad rule that money paid under mistake may be recovered even though the party paying was negligent, unless the position of the recipient has been changed to his prejudice. *German Sec. Bank* v. *Columbia F. & T. Co.,* 27 Ky. L. 581, 85 S. W. 761. No other court seems to have gone as far as the recent Kentucky cases. On the contrary, it has been held that a common mistake of a material fact does not warrant a recovery when the fact is equally open for the inquiry of both parties and defendant has a right to assume that plaintiff relied wholly on his own means of information. *Alton* v. *First Nat. Bank,* 157 Mass. 341, 32 N. E. 228, 18 L. R. A. 144.